TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~463~~. ~~248~~ 29

THE NEW YORK LIFE-INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLOTTE SEYMS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

446

FILED AUGUST 8, 1874.

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a *Writ of error.*

UNITED STATES OF AMERICA,
Southern District of the State of Mississippi:

To the clerk of the circuit court of the United States for the southern district of Mississippi, greeting:

Because in the process, proceedings, and judgment in and before our circuit court of the United States for the southern district of Mississippi, between Charlotte Seyms, plaintiff, and the New York Life-Insurance Company, defendants, in which, on the twenty-eighth day of November, A. D. 1873, the said Charlotte Seyms recovered judgment for the sum of three thousand eight hundred and eighty-nine dollars and eighty-five cents against the said New York Life-Insurance Company, manifest error in law has intervened, to the damage of the said New York Life-Insurance Company, as by their petition we are informed; and we, being willing that the error, if any there be, may be corrected, and full and speedy justice done therein, do command you to send, under your signature and the seal of your court, openly and distinctly, a complete and perfect transcript of all of the said process, proceedings, and judgment, as the same remains of record in said court, with this writ, so that the same be before our Supreme Court of the United States of America, to be held at the Capitol, in the city of Washington, on the second Monday of October, A. D. 1874, next, so that our said Supreme Court may cause to be done, for correction of the error, what of right and according to law ought to be done.

Witness the honorable Nathan Clifford, senior associate justice of our said Supreme Court, the 1st Monday of November, A. D. 1873.

Witness also George T. Swann, clerk of our said circuit court, and the seal of his court affixed the 26th day of January, A. D. 1874.

[SEAL.] GEO. T. SWANN,
Clerk.

(Indorsed:) No. 1653. The New York Life-Insurance Co. vs. Charlotte Seyms. Writ of error. Issued the 26th day of January, 1874. Geo. T. Swann, clerk.

b *Citation to the Supreme Court.*

THE UNITED STATES OF AMERICA,
Southern District of the State of Mississippi:

To the marshal of the United States for the southern district of Mississippi, greeting:

Whereas on the 28th day of Nov'm'b'r, A. D. 1873, by judgment of our circuit court of the United States for the southern district of Mississippi, Charlotte Seyms, plaintiff, recovered judgment against the New York Life-Insurance Company, defendants, for the sum of three thousand eight hundred and eighty-nine dollars and eighty-five cents, besides the cost of suit. And the said New York Life-Insurance Company having prayed and obtained a writ of error, returnable unto our Supreme Court of the United States, at the Capitol, at Washington City, on the second Monday of October, 1874, next, and having given bond for supersedeas, we command you to cite the said Charlotte Seyms, or James W. M. Harris and Nat. Harris, of the firm of Messrs. Harris &

Harris, her attorneys of record, to appear then and there, in and before said Supreme Court, to defend the said writ of error, and have then and there this precept before our said Supreme Court.

Witness the honorable Nathan Clifford, senior justice of our said Supreme Court, the second Monday of October, A. D. 1873.

R. A. HILL,
Judge.

Witness also George T. Swann, clerk of our said circuit court, and the seal of his court affixed, the 26th day of January, A. D. 1874.

[SEAL.] GEO. T. SWANN,
Clerk.

THE UNITED STATES OF AMERICA,
Southern District of Mississippi:

Personally appeared before me, A. McGehee, a commissioner of the United States for the southern district aforesaid, Thomas J. Wharton, one of the firm of T. J. & T. A. R. Wharton, attorneys of record of the New York Life-Insurance Company in the case referred to in the within citation, viz, Charlotte Seyms vs. said company, in the circuit court of the U. S. for the district aforesaid, who made oath that on the 31st day of January, 1874, he delivered to J. W. M. Harris, one of the firm of Harris & Harris, attorneys of record for the said Charlotte Seyms in the foregoing case, a true and perfect copy of this citation.

T. J. WHARTON.

Sworn to & subscribed before me this 31st day of January, 1874.

ALEX. McGEHEE,
U. S. Commr.

(Indorsed:) No. 1653. From first district, Hinds County. New York Life-Ins. Co. vs. Charlotte Seyms. Citation. Filed in clerk's office Jany. 26th, 1874. G. T. Swann, clk. To October term, 1874, Supreme Court.

1 Pleas had at a term of the circuit court of the United States for the southern district of Mississippi, begun and held in the court-room thereof, in the city of Jackson, in said State and district, on the first Monday, the third day, of November, in the year of our Lord one thousand eight hundred and seventy-three.

Present: The Hon. Robert A. Hill, district judge of the United States for the districts of Mississippi; F. Brannigan, esq., district attorney for said southern district of Mississippi; Leroy S. Brown, United States marshal for said district; and George T. Swann, clerk of said court.

MRS. CHARLOTTE SEYMS
vs.
THE NEW YORK LIFE-INSURANCE COMPANY.

Be it remembered that heretofore, to wit, on the 4th day of November, in the year of our Lord 1872, came the defendants herein, the New York Life-Insurance Company, and filed in the office of the clerk of the circuit court of the United States for the southern district
2 of Mississippi, a transcript of the record of the process and proceedings had in this cause in the circuit court of Warren County, in said State of Mississippi, which said transcript of record,

together with the process, proceedings, pleadings, and final judgment thereon, had and rendered in said cause by said circuit court of the United States, are in the words and figures following, to wit:

Transcript of record.

CHARLOTTE SEYMS
vs.
THE NEW YORK LIFE-INSURANCE COMPANY.

Pleas before the Hon. Geo. F. Brown, judge of the fifteenth judicial district of Mississippi, at the court-house, in and for the county of Warren, on the day of .

Be it remembered that heretofore, to wit, on the 17th day of July, A. D. 1872, the plaintiff, by her atto'neys, filed her declaration and exhibits against said defendant, which declaration and exhibits are in words and figures following, to wit:

3 In the circuit court of Warren County, Mississippi, July term, A. D. 1872.

CHARLOTTE SEYMS
vs.
THE NEW YORK LIFE-INSURANCE COMPANY.

Charlotte Seyms, the plaintiff, of the city of Vicksburg, State of Mississippi, complains of the New York Life-Insurance Company, incorporated by the laws of the State of New York, doing business at Vicksburg, in the State of Mississippi, under the laws of the State of Mississippi, through Joseph E. Johnston, Benjamin G. Humphreys, and Livingston Mims, agents of said New York Life-Insurance Company, under the firm-name and style of B. G. Humphreys & Co., defendants:

For that whereas, heretofore, to wit: On the 23rd day of December, A. D. 1859, by a certain of insurance then duly made and entered into by the said defendants, and signed by the president and actuary of said company, after reciting that, in consideration of the sum of one hundred and forty-nine dollars and seventy-five cents to the defendant in hand paid by the plaintiff on the twenty-third day of December, A. D. 1859, and to be paid on the said twenty-third day of December in
4 every year during the continuance of said policy, said defendant, said New York Life-Insurance Company did assure the life of Henry S. Seyms, (the husband of the plaintiff,) late of Vicksburg, county of Warren, and State of Mississippi, for the sole use and benefit of the plaintiff in the sum of two thousand five hundred dollars, for the term of his natural life, commencing on the 23rd day of December, A. D. 1859, at noon; and the said defendant, by the said policy of insurance aforesaid, did promise and agree to and with the plaintiff well and truly to pay, or cause to be paid, the said sum aforesaid to the plaintiff, or her legal representative, within sixty days after due notice and proof of the death of said Henry S. Seyms; and it was provided in said policy of insurance, and declared to be the true intent and meaning thereof, and was so accepted by the plaintiff, that in case the said Henry S. Seyms should, without the consent of the defendant previously obtained and endorsed upon said policy, pass beyond the settled limits of the United States that lie east of the Rocky Mountains, (except into

5 the settled limits of the British provinces of the two Canadas, Nova Scotia, or New Brunswick,) or should, without such previous consent thus endorsed, visit or reside in those parts of the United States which lie south of the southern boundary-lines of Virginia and Kentucky, between the first of July and the first of November, or should, without such previous consent thus endorsed, enter into any military or naval service whatever, (the militia not in actual service excepted,) or in case said Henry S. Seyms should die in a duel or by the hands of justice, or in the known violation of any law of the United States, or of any State or country, or in case his death should be caused by intoxicating drinks or by opium, the policy should be void; and that if the declaration made by the plaintiff, dated December 13, 1859, and referred to in said policy as upon the facts of which said policy was issued, to wit, in substance, that the age of said Henry S. Seyms was 54 years, stating the time and place of his birth and his place of residence, and the true and exact state of his health, as then known to the plaintiff, should prove to be untrue in any respect, then in that case the
6 policy should be null and void; and it was further provided that in case the plaintiff should not pay the annual premiums aforesaid, on or before the time aforesaid, then, in such event, said policy should cease and And the plaintiff now avers and declares that said written consent of said defendant, as provided for and required in said policy, as to the place of travel, sojourn, and residence of said Henry S. Seyms, was duly obtained and attached to said policy, according to the form of the policy; that said Seyms never did enter into any military or naval service whatever, or die in any duel, or by the hands of justice, in the violation of any law of the United States, any State, or country; nor was his death caused by intoxicating drink, or from the use of opium, or in any other manner, as provided against in said policy; and the plaintiff avers and declares that the said declaration in the said policy referred to contained a true and faithful representation of the facts as therein stated, and was found to be true, without fraud or collusion in the matter therein contained; and that she hath in all things con-
7 formed herself to, and performed and kept all things in said policy referred to be kept and performed, and has always been ready and willing to do so, and is now ready and willing to do so, in all respects whatsoever, and she hath not been in any fault whatever in respect of the same; and that at the time of the death of said Henry S. Seyms said policy was, and remained, in full force and effect, and hath not been avoided, annulled, cancelled, or destroyed by any act or acts, fault or omission therein by the said Henry S. Seyms or the plaintiff; and that on the day of , A. D. 1862, said Henry S. Seyms died, and that thereby, according to the terms and provisions of said policy, the said sum aforesaid so insured to the plaintiff, as aforesaid, became payable and due to the plaintiff, as provided in said policy, and the said defendant was duly notified of all the same, as required by said policy, in the manner and form as therein provided, which said policy of insurance is herewith filed as part hereof, marked "Exhibit A;" and although sixty days since the decease of said Henry S. Seyms have long since elapsed, the said defendant being notified as aforesaid, the defendant hath
8 not paid to the plaintiff the said sum so insured, nor hath the plaintiff been paid or satisfied the said sum of twenty-five hundred dollars, or any part thereof, and the same is yet, and now is, wholly due and unsatisfied to the plaintiff by the defendant, contrary to the promises so made by the defendants aforesaid, with interest thereon at

the rate of six per centum per annum from said time of payment aforesaid.

Wherefore she brings this suit, and judgment is demanded for said sum of twenty-five hundred dollars, with interest thereon as aforesaid, and all costs of suit.

HARRIS AND HARRIS,
Attorneys for Plaintiff.

(Endorsed :) Filed, and writ issued July 17th, 1872.
T. W. CARDOZA, *Clerk.*

Exhibit of policy.

THE NEW YORK LIFE-INSURANCE COMPANY.

Annual premium, $149.75; age, 54; sum insured, $2,500.

No. 13672.—This policy of insurance witnesseth that the New York Life-Insurance Company, in consideration of the sum of one hundred and forty-nine dollars and seventy-five cents, to them in hand paid by Charlotte Seyms, wife of Henry
9 S. Seyms, and of the annual premium of one hundred and forty-nine dollars and seventy-five cents, to be paid on the twenty-third day of December in every year during the continuance of this policy, do assure the life of Henry S. Seyms, book-binder, of Vicksburg, in the county of Warren, State of Mississippi, for the sole use of the said Charlotte Seyms, in the amount of twenty-five hundred dollars, for the term of his natural life, commencing on the twenty-third day of December, 1859, at noon.

And the said company do hereby promise and agree, to and with the said assured, his executors, administrators, and assigns, well and truly to pay, or cause to be paid, the said sum insured to the said Charlotte Seyms, or her legal representatives, within sixty days after due notice and proof of the death of the said Henry S. Seyms. And in case of the death of said Charlotte Seyms before the decease of the said Henry S. Seyms, the amount of the said insurance shall be payable after her death to her children for their use, or to their guardian, if under age, within sixty days after due notice and proof of the death of the
10 aforesaid Henry S. Seyms as aforesaid, deducting therefrom all notes for premiums on this policy unpaid at that time. Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is accepted by the assured upon these express conditions, that in case the said Henry S. Seyms shall, without the consent of this company previously obtained and endorsed upon this policy, pass beyond the settled limits of the United States that lie east of the Rocky Mountains, (excepting into the settled limits of the British Provinces of the two Canadas, Nova Scotia, or New Brunswick,) or shall, without such previous consent thus endorsed, visit or reside in those parts of the United States which lie south of the southern boundaries of the States of Virginia and Kentucky, between the first of July and the first of November, or shall, without such previous consent thus endorsed, enter into military or naval service whatever, (the miltia not in actual service excepted,) or in case he shall die in, or in consequence of, a duel or by the hands of justice, or in the known violation of any law of the United States, or of any State or country, or in case
11 his death shall be caused by intoxicating drinks or opium, this policy shall be null and void.

And it is understood and agreed to be the true intent and meaning

hereof, that if the declaration made by the said Charlotte Seyms, and bearing date the thirteenth day of December, A. D. 1859, and upon the faith of which this agreement is made, shall be found in any respect untrue, then and in such case this policy shall be null and void; or in case the said Charlotte Seyms shall not pay the said premiums on or before the several days hereinbefore mentioned for the payment thereof, then and in every such case the said company shall not be liable to the payment of the sum insured, or in any part thereof, and this policy shall cease and determine.

N. B.—If assigned, notice to be given to the company.

In witness whereof the said New York Life-Insurance Company have, by their president and actuary, signed and delivered this contract, *signed and delivered this contract*, this twenty-third day of December, one thousand eight hundred and fifty-nine.

All receipts for premiums paid at agencies are to be signed by the president or actuary.

MORRIS FRANKLIN,
President.

PLINY FREEMAN, *Actuary.*

12 *Permission to travel and reside east* 100 *deg. W. L.*

OFFICE OF THE NEW YORK LIFE-INSURANCE CO.,
112 *and* 114 *Broadway, New York, December* 23*rd*, 1859.

Policy No. 13672.] Life of Henry S. Seyms. [$2,500–$12.50.

In consideration of the extra premium of one-half of one per cent. per annum, in addition to the amount of premium named in policies, Henry S. Seyms, the party insured under policy No. 13672, has permission to travel and reside in any part of the United States east of the 100th degree of west longitude at all seasons of the year, and by first-class vessels to visit any northern part of the United States on the coast of the Atlantic.

MORRIS FRANKLIN, *Pres't.*

½ % extra on $2,500=$12.50 for southern risk. Paid 24 Jan'y, 1860.
W. A. BARBOUR, *Agt.*

Copy of annual receipt.

NEW YORK LIFE-INSURANCE COMPANY.

Policy No. 13,672. $166.44.
12.50 extra.
89.85 cash, 60 p. c.—Dec. 23d, 1860.
59.90 note, 40 p. c.
4.19 int. on notes.

13 Received the sum of one hundred sixty-six $\frac{44}{100}$ dollars, in full for annual premium on policy, numbered as above, on life of H. S. Seyms, for $2,500, to December 23d, 1861.

MORRIS FRANKLIN, *Pres't.*

W. A. BARBOUR.

(Written on margin:) Not valid unless countersigned by—
W. A. BARBOUR.

(Endorsement across the face of the receipt as follows:) Premiums not paid when due, according to the terms of the policy, annuls the same, but it may be renewed at the home-office, within a reasonable time, upon satisfactory evidence of good health being furnished.

(Endorsement:) Amount, $2,500. Date, Dec. 23d, 1859. Term of life. Annual payment, when due, Dec. 23d. Annual payment, $149.75. Extra, 12.50. Policy, 1.00. $163.25.

And upon the filing of said declaration and exhibit the clerk issued a writ, which is in words and figures following, to wit:

THE STATE OF MISSISSIPPI,
Warren County:

To the sheriff of said county, greeting:

You are hereby commanded to summon The New York Life-
14 Insurance Company, if to be found in your county, to be and personally appear before the circuit court to be held at the court-house in and for the county of Warren, on the fourth Monday of July, 1872, to answer the complaint of Charlotte Seyms in an action on assumpsit for the sum of $2,500, upon a policy of insurance upon the life of Henry S. Seyms, dated December 23rd, 1859. And have then there this writ.

Witness my hand and seal of said court at office, in the city of Vicksburg, this 17th day of July, A. D. 1872.

[SEAL ATTACHED.] (Signed) T W. CARDOZA, *Clerk.*

Upon receipt of said writ the sheriff made the following endorsement:

(Endorsed:) Received this 17th day of July, A. D. 1872.
CHAS. E. FURLONG, *Sheriff.*

The sheriff made the following appointment of special deputy to execute and return this writ, as follows:

I hereby appoint D. Campbell special deputy to execute and return the within writ, this 17th day of July, A. D. 1872.

[SEAL.] CHAS. E. FURLONG, *Sh'ff.*

The following return was made:

Summoned the within-named defendant, The New York Life-
15 Insurance Company, personally to appear and answer this writ by delivering a true copy of the same to B. G. Humphreys and Co., agents of the said New York Life-Insurance Company, this the 17th day of July, A. D. 1872.

CHAS. E. FURLONG, *Sheriff,*
By D. CAMPBELL, *S. D. S.*

Petition for transfer.

Afterwards, to wit, on the 27th day July, 1872, the defendant, by attorney, offered the following petition for transfer of said cause to the circuit court of the United States for the southern district of Mississippi

In the circuit court, Warren County, Mississippi.—July term, 1872.

To the Hon. G. F. Brown, judge, &c.:

The petition of the New York Life-Insurance Company, doing business in Mississippi, through their agents, Joseph E. Johnston, Benjamin

G. Humphreys, and Livingston Mims, under the firm of B. G. Humphreys & Co., show that Charlotte Seyms is a citizen of Mississippi, residing in the county of Warren, in the southern district, &c., and that the defendant, The New York Life-Insurance Company, is duly chartered
16 and incorporated by the legislature of the State of New York, and its stockholders are citizens of said State of New York; that the matter in controversy in said cause exceeds $500, exclusive of interest and costs, and the said company, by their said agents, who now enter their appearance, claim that they are entitled to have this cause removed for trial to the next term of the circuit court of the United States for the southern district of Mississippi, to be held at Jackson 1st Monday in November next, 1872. And said defendants pray that said cause may be transferred for trial to said term of said circuit court of the United States. And they offer T. J. Wharton as security, who *are* good and sufficient security, that the said defendants will enter in the said circuit court of the United States, at the time aforesaid, to wit, on the 1st Monday in November, 1872, and on the day aforesaid, copies of the proofs against them in the suit aforesaid.

STATE OF MISSISSIPPI,
Warren County:

Personally appeared before me, judge of the circuit court of said county, B. G. Humphreys, of the firm of B. G. Humphreys & Co.,
17 who made oath that the matters and things set forth in the foregoing petition are true.

BENJ. G. HUMPHREYS.

Sworn to and subscribed before me this the 27th day of July, 1872.
GEO. F. BROWN, *Judge.*

(Endorsed:) Filed July 27th, 1872.
T. W. CARDOZA, *Clerk.*

And accompanying the petition the bond of B. G. Humphreys and T. J. Wharton, which reads as follows:

Bond.

Know all men by these presents that we, the New York Life-Insurance , represented by B. G. Humphreys and Co. in the State of Mississippi, which firm is composed of said B. G. Humphreys, Joseph E. Johnston, Livingston Mims, as principals, and T. J. Wharton and securit*y*s, are held and firmly bound unto Charlotte Seyms in the sum of five hundred dollars, for payment whereof the said New York Life Insurance bind themselves and the said Wharton as surety, bind themselves, their heirs, &c., by these presents. Given under our hand and seals this the day of July, 1872.

The following is the condition of this bond:

18 Whereas the said Charlotte Seyms has filed a suit in the circuit court of Warren County, Mississippi, to the July term thereof, 1872, against said B. G. Humphreys & Co. as agents of said New York Life Insurance :

Now, if the said obligors, as agents aforesaid, upon the granting of the application aforesaid shall enter in the said circuit court of the United States on the 1st Monday in November, 1872, the same being the first day of said term, copies of the process issued against it in said suit and

of all pleadings, depositions, testimony, and proceedings, then this obligation to be void; otherwise to remain in full and effect.

(Signed) B. G. HUMPHREYS & CO. [SEAL.]
T. J. WHARTON. [SEAL.]
[SEAL.]

This day personally appeared before me, the clerk of the circuit court for said county, the above-named B. G. Humphreys, T. J. Wharton, who testified that they signed, sealed, and delivered the foregoing bond as their act and deed on the day and year and for the purposes specified therein, and who also made oath before me (the said Wharton, security aforesaid) that he is worth the sum of $500 over and above all
19 his legal liabilities, and that he had visible property to said amount subject to levy and sale under execution over and above all property exempted by law for sale or debt.

T. J. WHARTON.

Acknowledged and sworn to and subscribed before me this 27th day of July, 1872.

GEO. F. BROWN,
Judge.

And the said defendant, on the 27th day of July, 1872, filed his motion as follows, to wit:

C. SEYMS
vs.
NEW YORK LIFE-INSURANCE CO. } 2247.

The defendants' attorney comes and moves the court to transfer this case to the November term, 1872, of the circuit court of the United States for the southern district of Mississippi, at Jackson, on petition and bond filed.

T. J. and F. A. R. Wharton, attys. for deft.
Harris and Harris, contra.

(Endorsed:) Filed July 27th, 1872.

T. W. CARDOZA,
Clerk.

Which motion was sustained as follows, to wit:

C. SEYMS
vs.
NEW YORK LIFE-INS. CO. } 2247.

Ordered that this cause be transferred to the circuit court of the United States for the southern district of Mississippi, to sit at
20 Jackson on 1st Monday in November, 1872.

(Endorsed:) Filed 29th July, 1872.

T. W. CARDOZA,
Clerk.

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21 STATE OF MISSISSIPPI,
Warren County:

I, T. W. Cardoza, clerk of the circuit court in and for said county, do hereby certify that the foregoing 20 pages contain a full, true, and complete transcript of the record in the above cause, as fully as the same appears aforesaid and on file in my office.

Given under my hand and seal of office this 30th day Oct., 1872.

[L. S.] T. W. CARDOZA, *Clerk.*

(Endorsed:) Ten dollars on apc. of fees and transcript. Filed by defts. Nov. 4, 1872.

GEO. T. SWANN, *Clk.*

And on the 13th day of November, A. D. 1872, a day in the November term, 1872, of said circuit court of the United States, the following proceedings were had in this cause, to wit:

MRS. CHARLOTTE SEYMS
vs. } 1653.
NEW YORK LIFE-INS. CO.

Continued.

And on the 21st day of November, 1872, came the said defendant, the New York Life-Insurance Company, by their attorneys, and filed
22 a plea in this cause, which is as follows, to wit:

Plea.

Circuit court.—November term, 1872.

THE UNITED STATES OF AMERICA,
Southern District of Mississippi:

CHARLOTTE SEYMS
vs. } 1653.
THE NEW YORK LIFE-INS. CO.

And the said defendants, by attorney, come and defend the wrong and injury, when, &c., and for plea, say they did not undertake and promise in manner and form as said plaintiff in her declaration in this behalf has complained, and of this she puts herself upon the country, &c.

T. J. AND F. A. R. WHARTON,
Attys. for Deft.

Filed Nov. 21, 1872.

G. T. SWANN, *Clk.*

And on the 30th day of November, 1872, the same being another day of the November term, 1872, of said court, the following order was made in this cause, to wit:

CHARLOTTE SYMS
vs. } 1653.
N. Y. LIFE-INS. CO.

Leave given to defts. to file additional pleas in 60 days, or to
23 give notice in that time to plaintiff or his attorneys of all special matter which can be legally admitted in evidence, and which they will offer in evidence under the general issue already filed.

And afterwards, on the 27th day of May, 1873, the following "notice of matter of defence" was filed herein, to wit:

JACKSON, *May 9th*, 1873.

GENT'N: Y'rs of 8th inst. is rec'd. The case of Mrs. C. Seyms vs. N. Y. Life-Ins. Co. was called on last Monday, 1st day of term. You were not here, and we were not advised of your wish as to the day for trial. We set it for next Thursday. All the matters of defence would arise under the "general issue." They are, that it is a case of "lapsed policy," the annual premium not being paid as required by terms of policy.

What earlier day would suit you better than the day named? We are anxious to accommodate you—will do so if we possibly can. We are expecting some depositions from N. Y., which have not come.

Very truly,

T. J. AND F. A. R. WHARTON.

MESSRS. HARRIS AND HARRIS,
Vicksburg, Miss.

Filed May 27th, 1873.

GEO. T. SWANN, *Clerk.*

24 And at the May term, 1873, of said court, and on the 27th day of May, 1873, the following order was made in this cause by said court, and entered upon the minutes thereof, to wit:

CHARLOTTE SEYMS
vs. } 1653.
NEW YORK LIFE-INS. CO.

Continued, on application of defendant's counsel, for cause shown.

And afterwards, to wit, on the 24th day of November, 1873, the following stipulation, waiving a jury in this cause, was filed, to wit:

CHARLOTTE SEYMS
vs. } No. 1653.
THE NEW YORK LIFE-INSURANCE CO.

W. S. STATHAM
vs. } No.
SAME.

It is stipulated and agreed by and between the parties to the above-styled causes that the same shall be tried before the Hon. Robert A.

Hill, judge of dist. court, before the circuit court, without a jury, a jury being dispensed with, according to the form of the statute in such case made and provided.

HARRIS AND HARRIS,
For Charlotte Seyms.
NUGENT AND YERGER,
For W. C. Statham.
WHARTONS, *For Deft.*

Filed Nov. 24, 1873.

GEO. T. SWANN, *Clk.*

25 And now afterwards, to wit, on the 28th day of November, 1873, the same being a day in the term of said circuit court of the United States for the southern district of Mississippi, begun and held in the court-room thereof in the city of Jackson, on the third Monday of November, A. D. 1873, as set forth in the caption hereof, the following finding and final judgment was rendered in this cause by said court, and entered upon the minutes thereof, to wit:

CHARLOTTE SEYMS
vs.
THE NEW YORK LIFE-INSURANCE COMPANY. } No. 1653.

The parties having by stipulation waived a trial by jury, and submitted the facts, as well as the law, to the court, and the court having heard and considered the evidence, finds the facts as follows: That the premiums were all paid to the defendant, according to the terms of the policy sued upon, until the policy, falling due on the 23d day of December, 1861, at which time the war between the Confederate States and the United States was being waged; that at that time, and from the issuance of the policy to the death of said Henry S. Seyms, upon whose life said policy was issued, he and the plaintiff, his wife, resided in the city
26 of Vicksburg; that said Henry S. Seyms departed this life in the month of May, 1862; that plaintiff continued to reside in the State of Mississippi until the close of the war, when, in the month of July, 1865, she made and presented proof of the death of said Henry S. Seyms to defendant, and demanded payment of the policy, less the premium so unpaid before his death.

It is therefore considered by the court that the plaintiff recover of the defendant the sum of two thousand three hundred and fifty-one dollars and twenty-five cents, the balance after deducting the premium due thereon, together with the further sum of one thousand one hundred and thirty-eight dollars and sixty cents, being interest at the rate of six per cent. since the 28th day of October, 1865, making together the sum of three thousand eight hundred and eighty-nine dollars and eighty-five cents, together with the costs of this suit, for which execution may issue.

27 At the date of the rendition of the foregoing judgment in this cause by said court, the following opinion in writing was delivered in this cause by the Hon. Robert A. Hill, the judge presiding in said court, to wit:

In the circuit court of the United States for the southern district of Mississippi, November term, 1873.

CHARLOTTE SEYMS
vs.
NEW YORK LIFE-INSURANCE COMPANY. } No. 1653.

This is an action at law brought in the circuit court of Warren County by the plaintiff against the defendant, to recover a policy for the sum of $2,500 issued by the defendants upon the life of her late husband, Henry S. Seyms, on the 23d day of December, 1859, for the consideration of the sum of $149.75 paid upon its issuance, and the like sum to be paid on the 23d December each year during the life-time of said Henry S., or during the continuance of the policy.

The defence is that the policy lapsed by means of the non-pay-
28 ment of the premium falling due December 23, 1861, this being the first default upon the part of the assured. The replication sets up the existence of the war at the time the premium fell due, and its continuance until after the death of Henry S. Seyms as an excuse for the non-payment.

The proof shows that said Henry S. departed this life in May, 186–, in the city of Vicksburg, where the contract for insurance was entered into, and where he had continued to reside from that time up to the time of his death. That in the spring of 1861 Barbour, the agent of defendants, with whom or through whom the insurance was made, entered into the confederate army and abandoned his agency for defendants, which he did not afterwards resume. At the time of the default relied upon as a defence, the war was being waged between the Confederate States and the United States, and so continued and was in existence up to the death of said Henry S., the plaintiff and her husband remaining all the time within the confederate lines.

The existence of the war, and the fact that plaintiff and her husband remained within the confederate lines or within the insurrection-
29 ary territory when the premium fell due, is relied upon by the plaintiffs to excuse the default in payment of any further premiums, which is denied by defendant as affording such excuse. The proof further shows that after the close of the war plaintiff went in person to the office of defendant, in the city of New York, with proof of the death of her husband, and demanded payment of the amount of the policy less the unpaid premiums.

The sole question for decision is, did the existence of the war and residence of the plaintiff and her husband within the insurrectionary territory suspend the contract, and, upon the termination of the war, entitle her to demand and receive the amount of the policy less the premiums unpaid?

A number of other questions have been discussed by counsel, but, arriving at the conclusions reached, it is not necessary further to consider them.

The question for decision is one of importance, as many similar cases remain unadjusted between the defendant and the assured, not only pertaining to the interest of the defendant, but of many other insur-
30 ance companies located within the loyal States, and policy-holders residing in the Confederate States during the war.

Since the close of the war there have been a number of decisions by the supreme courts of the different States, and in some of the circuit courts of the United states, upon the question now presented, but this

is the first time the question has been presented to this court, either in this or the northern district. No decision on the precise question has yet been made by the Supreme Court of the United States, so that this court is not concluded by any adjudication yet made. The adjudications referred to by the able counsel on both sides, who have exhausted research on the question, whilst entitled to the gravest consideration, are only binding upon this court so far as the reasoning contained in them convinces the mind of their correctness.

It is contended by defendant's counsel that the conditions contained in the policy constitute the only contract between the parties, one of which is "that unless the premium due upon each 23rd day of December during its continuance is promptly paid upon that day by noon, that the policy shall become void, and all payments theretofore made
31 shall be forfeited to the defendant;" that performance of this condition is imperative; and that no act of either God or man can excuse it, so as to give the plaintiff a right of recovery without its performance, unless, by the grace of the defendant, payment is afterwards received, and the contract renewed and continued.

That this condition of the contract must in all cases be complied with to entitle the policy-holder to recover (and which will be found in almost every policy) is true, unless some act is done by the insurer through its agents by which this performance is waived or excused, or by a state of war existing at the time performance should be made, suspending the contract and preventing performance, the last condition of things being the only one necessary to be considered in this case.

It is now too well settled by the Supreme Court of the United States, an authority from which there is no appeal, that all legal contracts and obligations existing between the citizens of the loyal and disloyal States during the late rebellion were only suspended and not annulled during that time, and that upon the restoration of peace they were brought into full force; that, during this suspension, the debtor was not
32 only excused but prohibited from making payment on the one hand, but from enforcing payment on the other; that, as a necessary result from this prohibition, the debtor was excused from paying interest and was prohibited from setting up the statute of limitations, or interposing any other defence arising during the suspension; in other words, both parties, upon the cessation of hostilities and the restoration of peace, as it were awoke up as though they had been asleep during the suspension, and commenced at the point where they left off.

If the contract sued upon was one embraced in the rule stated, there is no doubt of the plaintiff's right of recovery; but if it is determined to be a contract made during the war, then there is little doubt that she cannot recover.

The contract was made on the 23rd day of December, 1859, anterior to the war, and at a time when there was no reasonable probability that a war between the sections would exist, except among the politicians who were meditating it. I am satisfied that the payment of the advance premium and the delivery of the policy was an executed contract,
33 was an agreement on the one side to pay the premiums as they respectively fell due, and on the other to pay the amount of the policy upon the death of Henry S. Seyms; the payment of the premiums are in fact but payment by instalments, to which there is annexed a forfeiture upon non-payment; it follows as a legitimate result that whatever will excuse a payment will prevent the forfeiture.

The contract is not an assurance for one year, which may be renewed

at the end of the year by the payment of a like premium, as in fire-insurance, which generally also contains a power of revocation upon the part of the insurer upon re-payment of the premiums paid, and in which the insurer has the right upon the renewal to demand a higher rate of premium, but is an entire and binding contract, subject only to the forfeiture by reason of non-payment of the premiums, or such cause as may avoid the contract at its inception, none of which are set up as a defence to this action. It is insisted for the defence that it is a well-settled rule of law that, if the assured desire to be insured against the casualties of war, he must stipulate for it in the contract;
34 that, as a general rule, is true, but I apprehend that that rule applies as to a war between nations, or to imminent collisions between the people of the same nation, or to one such actually pending, and refers to a destruction of property during the existence of the war, and not to a suspension of a contract during hostilities, having no relation to it.

I am referred by defendant's counsel to the very able opinion delivered by Judge Emmons in the case of Tait *vs.* N. Y. Life-Insurance Company, recently delivered in the United States circuit court for the western district of Tennessee, as establishing the defence here insisted upon, and could I agree with that able and learned jurist, for whose judicial opinions I entertain the highest regard, that this contract and the one upon which that suit was brought were only executory contracts, I would be compelled to decide the issue for the defendants. But, being of the opinion that it was an executed contract, the fulfilment of which upon the part of the plaintiff was only dependent upon the payment of the premium which she was forbidden to make, and was excused from making by reason of the war, it must be held, like all other con-
35 tracts, as suspended during the war, and not as destroying her right. The death of Henry S. Seyms having occurred before the plaintiff could make payment, the policy became due and payable upon proof and notice of his death, less the amount of the premiums due. The proof is that proof was made, notice given, and payment demanded as soon after the close of the war as it reasonably could be done.

The case of Fire Ins. Co. *vs.* Semmes, recently decided by the Supreme Court, though not exactly an analogous case, still, in my opinion, goes far to maintain the position above stated. That was a case of insurance against loss by fire. One of the stipulations in the policy was that suit should not be brought after a limited time. The assured being a resident of this State, and the war intervening, prevented the bringing of the suit within that time; although this was a positive condition, yet the court held that this limitation was suspended until after the close of the war, thus adding another to the many judicial decisions made by that high and honored tribunal, exhibiting to the people of this and other nations an enlightened and civilized jurisprudence of which we as a people may well be proud.

36 If I am in error in the conclusions at which I have arrived, the defendant can appeal to that tribunal of last resort in this cause, and have it corrected; but coming to the conclusions I have, the judgment must be entered for the plaintiff.

HILL, *Judge.*

37 The following is the evidence submitted to the court upon the final hearing and trial of this cause in said court, and upon which the preceding finding and judgment and opinion of said court in this cause was founded, to wit:

Deposition of Morris Franklin.

The circuit court of the United States for the southern district of Mississippi.

CHARLOTTE SEYMS
vs.
NEW YORK LIFE-INSURANCE COMPANY. } 1653. Notice.

To the plaintiff in the foregoing cause, or to Messrs. Harris and Harris, her attorneys of record.

Please to take notice that Morris Franklin, William H. Beers, Theodore M. Banta, and F. G. Scriba will be examined (de bene esse) on the part of the defendants in the above-entitled cause, before John A. Osborn, (a commissioner duly appointed by the circuit court of the United States for the southern district of New York, under and by virtue of the acts of Congress in such case made and provided,) at his
38 office, at the United States courts, 41 Chambers street, in the city of New York, on Saturday, the 12th day of April, 1873, beginning at 11 o'clock in the forenoon of that day, at which time and place you are hereby notified to be present, and put interrogatories, if you shall think fit.

Dated the 12th day of April, A. D. 1873.

T. J. AND F. A. R. WHARTON,
Attorneys for Defendant.

We acknowledge service of this notice, and waive a copy thereof.
M'ch 12, 1873.

HARRIS AND HARRIS.

UNITED STATES OF AMERICA,
Southern District of New York, City, County, and State of New York, ss:

Be it remembered that, on this twenty-third day of May, in the year of our Lord one thousand eight hundred and seventy-three, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20, 1812, and the act of Congress entitled "An act in addition to an act, entitled 'An act
39 for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, MORRIS FRANKLIN, to testify and the truth to say, on the part and behalf of the defendant, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Mississippi, wherein Charlotte Seyms complainant *vs.* New York Life-Insurance Company. And the said Morris Franklin, being about the age years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Morris Franklin, and he did thereupon depose, testify, and say as follows, viz:

I am the president of the New York Life Insurance Company, and have been for over twenty years last past. The principal and
40 home office of the company is at Nos. 346 and 348 Broadway, in the city of New York. The said company is incorporated by and under the laws of the State of New York, and is a purely mutual life-insurance company. The premium due on policy No. 13,672, on the life of Henry J. Seyms, on the 23rd day of December, 1861, was never tendered, paid to, or received by the defendants, or to or by any person having authority to act for them. By the rules and by-laws of said company, no agent of the company has any authority to receive or collect the annual premiums falling due on its policies of insurance without having in his possession for delivery to the assured, or the person making such payment, a receipt for such payment signed by the president or actuary of said company, and the said policy itself contains the following words: "All receipts paid at agencies are to be signed by the president or actuary."

I now produce, for annexation to this deposition, a form for such receipts which was used by said company during the year 1861. W. A. Barbour, who had been the agent of said company in the State of Mississippi for some years prior to the breaking out of the late war
41 between the North and the South, was not at the time when the said premium falling due on the 23rd day of December, 1861, was payable, in possession of any receipt therefor signed by either the president or actuary of said company. W. A. Barbour ceased to be an agent of said insurance company before the 16th day of August, 1861; before that date he entered into the military service of the so-called Confederate States of America, and was then actually engaged in such service in the State of Virginia, and thereafter continued to be in such service until after the month of January, 1862. Thereafter he had no authority given him to act in any respect for or on behalf of said company. There was never any contract, understanding, or agreement of any nature or kind whatever, between said company and Henry J. Seyms, or Charlotte Seyms, the beneficiary named in said policy of insurance, or any person acting on their or either of their behalf, by which the said company agreed or undertook, or were bound to keep and maintain, an agent in the State of Mississippi or elsewhere, to whom premiums falling due on said policy of insurance might be paid.

MORRIS FRANKLIN.

Subscribed and sworn to before me this 23rd day of May, 1873.

JOHN A. OSBORN, *U. S. Com'r.*

42 Cross-examined by Burton N. Harrison, esq., appearing for the plaintiff:

Question. When you state in your direct examination that the premium due on policy on the life of Henry J. Seyms on the 23d day of December, 1861, was never tendered to or received by the defendants, or to or by any person having authority to act for them, you mean, I suppose, that that was never done so far as you know?

Answer. So far as I know, and that it appears by our books that it never was done.

Q. You mean that your books do not show any such payment?

A. Yes.

Q. Will you produce the rules and by-laws of your company in force in 1861, with reference to the collection and payment of annual premiums falling due?

A. There is no by-law to that effect; but the practice of the company is as I have stated it to be in my direct examination.

Q. Are there no written rules of the company upon that point which were in force at the time referred to?

A. I do not know that there are. I think there are not.

Q. How do the agents of the company at distant points learn
43 the practice of the company upon that subject?

A. From our instructions to them.

Q. Will you produce a file of the instructions theretofore furnished by the company to Mr. Barbour, the agent of the company, you have spoken of in Mississippi?

A. I will have an examination made for the instructions sent to Barbour, if any were sent, and if the same can be found will annex copies thereof to this deposition. (Abstract of instructions marked "Ex. A, J. A. O.")

Q. Who determines the practice of the company?

A. The officers.

Q. What officers?

A. The president and actuary.

Q. Do they do so under any rules of the board of directors, or under any rule of the company?

A. I am not aware that they do.

Q. Then they do so by their own assumption?

A. Yes. I mean by virtue of their general powers as officers of the company.

Q. Is there any by-law of the company indicating what are the functions and duties of the president and actuary?

A. Yes; there is a by-law to that effect.

Q. Please produce and file it. Are the by-laws as filed by you the same which were in force in 1861?

44 A. The same. (By-laws marked "Exhibit B, J. A. O.")

Q. How was W. A. Barbour made an agent of that company; by a formal appointment in writing, or by letters, or by oral instructions?

A. The probability is by a formal appointment, though I cannot recollect. That is the usual course of procedure.

Q. Would the files of this company show a copy of this appointment?

A. No, sir; they would not show it.

Q. When you say in your direct examination that Barbour was not on the 23d day of December, 1861, in possession of any receipt signed by either the president or actuary of said company, you mean, I suppose, that so far as your knowledge extended he was not?

A. Yes; not beyond that

Q. So when you stated that Barbour ceased to be an agent of said company before the 16th day of August, 1861, you state that as a matter of opinion, and not as a matter of fact?

A. Yes, sir; as a matter of opinion.

Q. Upon what is that opinion based?

A. That opinion is based upon the fact that the company received a letter from Mr. Barbour in May or June, 1861, informing the
45 company that he was going to quit the business of a life-insurance agent, and was going with his company into the confederate army in Virginia. I cannot tell the exact date of the receipt of that letter. I will have an examination for the same made, in the books and papers of the company, and if it can be found will annex to this deposition the original or a copy thereof.

(Objected to by counsel for plaintiff, for the reason that in the absence of the production of that letter there is no sufficient reason shown for the testimony of this witness as to the contents of that letter. And also moves to strike out that testimony unless the witness can show a sufficient reason for the non-production of the letter. Counsel for defendants insists that the testimony is proper for the reason that parol evidence of the contents of a letter is proper if the letter itself cannot be found and produced, and as the witness offers to produce and annex to the deposition the original, or a copy of the letter if found, in case the original is not found, that the testimony above given by him as to the contents of the letter is competent evidence.)

46 Q. Is it within your personal knowledge that Mr. Barbour was in the military service of the Confederate States?

A. No, sir. I only judge from his own letters. All I know on that subject is the contents of the letter referred to.

Q. Did this company send to Mr. Barbour a reply to that letter?

A. I cannot say at this point. If any such reply was sent, and a copy of it can be found among the books and papers of the company, I will have a copy thereof annexed to this deposition.

Q. Did this company ever make a formal revocation of Mr. Barbour's agency?

A. Not to my knowledge.

Q. Did you make the statement contained in the final paragraph of your direct testimony with regard to the contract, understanding, or agreement therein referred to, as of positive knowledge of yours, or as a matter of opinion on your part?

A. As far as regards the officers, I spoke positively; in my official capacity I say that.

Q. As an officer of this company you have no knowledge of any such contract or agreement?

A. Yes; I mean to say that emphatically.

47 Q. Then I understand that, so far as your knowledge extends, there was no such contract or understanding, and that that was what you meant to say in your direct examination?

A. Yes, sir.

Re-direct examination by Mr. Crosby, counsel for defendants:

Q. How long have you been president of this company?

A. About twenty-five years.

Q. How are the contracts of this company ordinarily made?

(Objected to as immaterial and irrelevant.)

A. Made by the president and actuary.

Q. Are all contracts made by the president and actuary?

(Objected to as immaterial and irrelevant.)

A. Yes, sir.

Q. Why do you say, or from what information do you say, that the' was never any contract, understanding, or agreement made between the company and Henry J. Seyms, or Charlotte Seyms, by which the company agreed or undertook or were bound to keep an agent in the

48 State of Mississippi, or elsewhere, to whom premiums falling due on said policies of insurance might be paid?

A. Because it would be directly in opposition to the practice of the company.

Q. You say that you never had any knowledge or ever heard of such a contract being made?

A. No, sir; and I do not believe any ever was made.

Q. Where is the office for the transaction of the business of the New York Life-Insurance Company located?

A. In the city of New York.

Q. Has it any office located at any other place?

A. Our agents have offices.

Q. Does not the charter of the New York Life-Insurance Company provide that the office for the transaction of the business of said corporation shall be located in the city of New York, and not elsewhere?

A. Yes, sir. A copy of the charter is hereto annexed to this my deposition, and marked "Exhibit C, J. A. O." I am informed that there are some clerical errors in the printing of the charter, by they are immaterial.

49 Recross-examination by Mr. Harrison, for the plaintiff:

Q. Then I understand that in making the statement contained in the final paragraph of your direct examination, with regard to the contract, understanding, or agreement therein referred to, you made that statement relying merely upon your knowledge that it is not the general practice of the company to make such contracts or understandings.

A. Yes, sir. The knowledge of that fact and of the practice of the company.

MORRIS FRANKLIN.

Subscribed and sworn to before me this 23d day of May, 1873.

JOHN A. OSBORN,
U. S. Commissioner.

The testimony of Morris Franklin, by consent of Burton N. Harrison, esq., counsel for the plaintiff, and Charles P. Crosby, counsel for the defendants, was taken by a stenographer, with the permission of the commissioner, it being stipulated and agreed that no objection
50 shall be taken thereto upon the trial of this case upon the ground that such testimony was taken by a stenographer.

Dated May 23d, 1873.

CHAS. P. CROSBY,
Atty. for Defts. for the purpose of taking depositions.
BURTON N. HARRISON,
Of Counsel for Plaintiff.

"EXHIBIT A.—J. A. O."

An abstract from instructions to agents, November 1st, 1858.

RENEWAL OF POLICIES.

¶ 6th. Notices of times of payment and renewal of receipts will be forwarded to the agent in due season. When the premium is not paid when it becomes due the policy is absolutely forfeited, and can only be renewed upon application at the home office, and the production of a satisfactory certificate of good health from one of the company's medical examiners, the expense of which is to be paid by the applicant. Also

¶ 13th. No risks are binding until assumed by the home office.

51 "EXHIBIT B.—J. A. O."

By-laws of the New York Life-Insurance Company.

1. The business of the company shall be confined exclusively to insurance on lives and to insurance appertaining to or affecting life.

2. There shall be a stated monthly meeting of the board of trustees, held at the office of the company, on the second Wednesday of each month, and shall be called by a written or printed notice to each trustee. Special meetings may be called by the president, or in his absence by the actuary or vice-president, or by three trustees.

3. The president, or in his absence the vice-president, or in the absence of both a trustee, elected by a majority of a quorum present, shall preside at every meeting of the board of trustees.

4. At the next regular monthly meeting of the board after each annual election for trustees a president, vice-president, and actuary shall be elected, and the standing committees appointed by the president, subject to the approval of the board.

5. One or more resident physicians shall be appointed by the board, who shall hold their offices during the pleasure of the board.

6. There shall be the following standing committees, to consist
52 of five trustees, viz:

1st. A finance committee;

2d. A supervisory and agency committee;

3rd. A committee on losses;

4th. An auditing committee.

7. It shall be the duty of the finance committee to take and have a personal supervision of the funds of the company; to direct the mode, manner, and time of making and calling in investments; to examine the accounts, funds, and securities as often as they may deem necessary, or when required by the board; to report to each stated meeting and as often as requested by the board, and specially at the stated meetings in April and October, upon the condition of the funds, securities, assets, and investments of the company, with such suggestions as may, in their opinion, promote the interest of the company.

8. The supervisory and agency committee shall have the appointment and removal of agents and the fixing their compensation. The said committee shall have a general supervision over the business of the company, and shall report to the board, from time to time, such matters as in their judgment may require their approval and sanction.

The president and actuary shall consult with them in all matters of doubt touching the business of the company.

53 9. It shall be the duty of the committee on losses to examine all papers or proofs of death, to report at each stated meeting the names and residences of the persons dying, and the sum insured. No loss shall be paid unless the president and actuary, and at least a majority of the committee, shall concur therein, without the sanction of the board.

10. It shall be the duty of the auditing committee to examine the books of the company and pass upon all accounts and bills and the current expenses of the company twice in each year, and make report thereof at the regular monthly meetings in January and July; also to examine the monthly reports of the officers, and report upon the same at the next meeting of the board.

11. It shall be the duty of all the standing committees to convene on the call of the president, or in his absence of the vice-president or actuary.

The reports of all committees shall be in writing, and signed by such members as concur therein, and minutes of the meetings of committees shall be kept and submitted to the board when called for.

12. No risk shall be taken unless the president and actuary, and at least one of the resident physicians of the company concur therein,

54 without the action of the board, and no risk for a greater amount than twenty thousand dollars shall be taken upon any one life; and no change in the present form of policy shall be made without the sanction of the board.

13. The actuary shall give security for the faithful performance of the duties of his office, in a bond in the sum of $10,000, with securities to be approved by the supervisory committee, and every bond so taken shall be so drawn as to remain in force until a new bond be substituted and approved by the said committee, or until cancelled by resolution of the board.

SPECIAL DUTIES OF THE PRESIDENT.

14. The president shall have a general supervision and direction of the business of the company, and with the consent of the finance committee, may transfer stocks, satisfy mortgages, make and call in investments, and execute all other deeds and purposes requiring the seal of the company.

Whenever a vacancy occurs in the board of trustees, it shall be competent for any trustee to nominate a candidate to supply such vacancy; which nomination or nominations shall lie over till the next monthly meeting, at which time a choice by ballot may be made from among the nominees.

55 SPECIAL DUTIES OF THE ACTUARY.

15. The actuary shall have charge of the corporate seal of the company. He shall also have charge of the bonds, mortgages, certificates of stocks, and other valuable papers of the company. He shall provide all necessary and proper books, and with the president shall have a supervision of the books and clerks, and see that just and true cash, check, bank, and other proper books are kept, especially of all moneys received, deposited, drawn, and disbursed; for what and of whom received, for what and to whom disbursed, and the registering and cancellation of policies, and of all investments, and securities or assets, which shall be open, at all times, to the free examination of the board, or of any trustee.

It shall further be the duty of the actuary to keep full minutes of the proceedings of board; to enter such minutes in a book to be kept for that purpose, and to furnish all committees with such accounts and papers as may be required.

SPECIAL DUTY OF THE VICE-PRESIDENT.

16. In all cases during the absence or inability of the president, the vice-president shall be invested with all the powers which have
56 been or may hereafter be conferred upon the president by the by-laws of the company.

JOINT DUTIES OF THE PRESIDENT AND ACTUARY.

17. The president and actuary shall have power to effect insurance, acting in conformity with the 12 section of these by-laws. They shall appoint, remove, and fix the compensation of each and every person, except agents employed by the company, and shall every three months make a written report to the supervisory committee in relation to all charges made relating thereto. The president shall be ex-officio a member of all committees.

DUTIES OF THE RESIDENT PHYSICIANS.

18. It shall be the duty of the resident physicians, or one of them, to attend at the office of the company daily at stated hours, to make personal examination of persons offering themselves for insurance, and to enter in a book, to be kept for that purpose, the result of such examination; they shall also examine all applications for insurance from abroad, and endorse thereon their approval or rejection of the same.

19. All moneys belonging to the company shall be deposited in such bank or banks as shall be designated by resolution of the
57 board of trustees, to the credit of the company, and drawn only on the joint checks or drafts of the president and actuary, payable to the order of the person entitled to receive the money.

20. At all stated meetings the following shall be the order of business:

1st. Minutes of the last meeting read, corrected, and approved.
2d. Report of the finance committee.
3rd. Report of the supervisory committee.
4th. Report of the loss committee.
5th. Report of special committees.
6th. Miscellaneous business.

21. No trustee or officer of this company shall, directly or indirectly, borrow or use the funds of this company except to pay the losses and ordinary current expenses.

22. No alteration of the by-laws shall be made without being first proposed at a stated meeting, and can be considered only at a subsequent stated meeting, and can be adopted only by a concurrence of a majority of the whole board.

23. All investments in stocks, mortgages, and real estate, shall stand in the name of the "New York Life-Insurance Company," and not in the name of any individual as an officer of the company.

24. All former by-laws are hereby repealed.

58 EXHIBIT C.—J. A. O.

Charter of the New York Life-Insurance Company.

CHAPTER 209.

An act to incorporate the "Nautilus Insurance Company," passed May 21, 1841, by a two-thirds vote.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. There may be established in the city of New York an insurance company for marine, inland-navigation, and transportation and fire risks, to be called the "Nautilus Insurance Company," to continue for thirty years.

§ 2. All such persons as shall hereafter be stockholders of said company shall, and they are hereby declared to be a body-corporate by the name of the Nautilus Insurance Company.

§ 3. The capital stock of said corporation shall be two hundred thousand dollars, with the privilege of increasing the same at any time to four hundred thousand dollars, which shall be divided into shares of fifty dollars each; such increase of capital may be made from time to time as the directors of this corporation shall direct; and Addison

Dougherty, J. B. Nones, D. A. Cushman, H. W. Childs, Caleb S. Woodhull, and William V. Brady are appointed commissioners to receive subscriptions to the said capital stock. And the said commissioners,
59 or a majority of them, shall open subscription-books for the said stock on such day or days and at such place or places as they shall appoint, and shall give at least two weeks' notice of such time and place, in one or more newspapers printed in the city of New York; and two dollars *dollars* and fifty cents on each share of stock subscribed for shall be paid to the commissioners at the time of subscription; and in case the subscription shall exceed the capital stock, the commissioners may distribute the same among the subscribers as they shall deem best for the interest of the said corporation.

§ 4. In addition to the general powers and provisions of a corporation, as the same are declared by the third title of the eighteenth chapter of the first part of the Revised Statutes, the corporation hereby created shall have the power, by instrument, under seal or otherwise, to make marine insurance upon vessels, freights, goods, wares and merchandise, specie, bullion, commission, profits, bank-notes, and bills of exchange, and other evidences of debt, bottomry, and respondentia interests, and to make all and every insurance appertaining to or connected with marine or inland transportation risks; also to make insurance on dwelling-houses, stores, and other buildings, household furniture, mer-
60 chandise, and other property against loss or damage by fire. They may cause themselves to be re-insured against any risk upon which they may have made or shall make insurance.

§ 5. The corporation hereby created shall within two years from the passage of this act fill up their capital stock, as prescribed in section third of this act.

§ 6. In addition to the above-named provisions of this act, the corporation hereby created shall possess all the powers and be subject to the provisions contained in the sixth, seventh, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, seventeenth, eighteenth, and nineteenth sections of the act incorporating the Hamilton Marine Insurance Company of the city of New York, passed April fourth, eighteen hundred and thirty-eight.

§ 7. The legislature may, at any time hereafter, alter, modify, or repeal this act.

CHAPTER 155.

An act to incorporate "The Hamilton Marine Insurance Company" of the city of New York, passed April 6, 1838, by a two-thirds vote.

The people of the State of New York, represented in senate and assembly, do enact as follows:

61 SECTION 1. There shall be established in the city of New York a marine insurance company, to be called "The Hamilton Insurance Company," to continue for thirty years.

§ 2. All such persons as shall hereafter be stockholders of said company shall be and they are hereby declared to be a body corporate, by the name of "The Hamilton Insurance Company."

§ 3. The capital stock of the said corporation shall be two hundred and fifty thousand dollars, which shall be divided into shares of one hundred dollars each, and Shepherd Knapp, Simeon Draper, junior, and Benjamin F. Wheelwright, are appointed commissioners to receive subscriptions to the said capital stock.

§ 4. In case of the death, resignation, or absence of any of the commissioners named in this act of incorporation, it shall and may be lawful for the remainder of them to proceed to business, whose duties shall be the same in the premises as that prescribed to the whole of the said commissioners by the act of incorporation named, and such acts shall be legal.

§ 5. The corporation hereby created shall have power and authority to make insurance upon vessels, goods, wares, or merchandise, freight, bottomry, and respondentia interests, and all marine risks and
62 inland transportation and navigation, including the risk of fire, during the continuance of the risk from its inception.

§ 6. The stock and affairs of the said corporation shall be managed and conducted by twenty-one directors, each of whom shall be a stockholder and a resident of the State of New York, who shall be elected on the second Monday of January, in each and every year, at such time of the day and at such place in the city of New York as the board of directors for the time being shall appoint, and hold their offices for one year, and until others shall be chosen to supply their places, and no longer; and notice of the time and place for such annual election shall be published daily for the space of ten days next preceding the same, in at least two of the public newspapers printed in the city of New York; and every such election shall be held under the inspection of three or more stockholders in the said corporation, not being directors, to be previously appointed by the board of directors for that purpose, and shall be made by ballot by a plurality of the votes of the stockholders present, allowing one vote for every share; and stockholders not
63 personally present may vote by proxy, such proxy being granted directly to the person representing them at such election; and the first directors of the said corporation to be such persons as shall be duly elected to that office by a plurality of the votes of the stockholders assembled for such election, as soon as may be after the capital shall have been subscribed to, agreeably to the provisions of this act, and to continue in office for one year from the day on which the said corporation shall commence business: and if the term of one year shall not expire previous to the second Monday in January, then the said directors shall continue in office until the second Monday in January following, when other directors shall be chosen.

§ 7. The directors so chosen shall, as soon as may be after the passing of this act, and the directors hereinafter to be chosen at every annual election shall, as soon as may be after such election, proceed to choose out of their body a president, (who, with the board of directors, may appoint one or more assistant or vice-presidents not included in their body,) which president, or, in case of his death, resignation,
64 absence, or removal from office, the assistant or vice-president, shall preside until the next annual election, or until another president be chosen; or in case of the death, resignation, absence, or removal from office of the president, assistant, or vice-president, or the death or resignation of any director, such vacancy or vacancies may be filled for the remainder of the year wherein they may happen by the board of directors; or in case of the absence of the president and assistant or vice-president, the board of directors shall have power to appoint a president pro tempore, who shall have and exercise such powers and functions as the by-laws of the said corporation may provide.

§ 8. The commissioners hereinbefore named shall open subscription-books for the said stock on such day or days, and at such place or places, as they shall appoint, and shall give at least two weeks' notice of such

time and place daily, in one or more newspapers printed in the city of New York, and five dollars on each share subscribed shall be paid to the commissioners at the time of subscription.

§ 9. All policies of insurance and other contracts which are authorized by this act, which shall be made or entered into by the said cor-
65 poration, may be either under or without the seal thereof, and shall be subscribed by the president or such other officer as shall be designated for that purpose by the by-laws of said corporation, and attested to by the secretary, and being so signed, executed, and attested, shall be binding and obligatory upon the said corporation, according to the true intent and meaning of such policies and contracts, and the insured may thereupon, in case of loss arising, maintain an action against such corporation; and all such policies and contracts may be so made, signed, executed, and attested, without the presence of a board of directors, by the president and assistant or vice-president, or by either of them, or by a committee of directors to be appointed for such purposes; and the acts of such president and assistant or vice-president, or either of them, or of such committee, if done under and in conformity with the by laws of such corporation, shall be binding and obligatory on said corporation.

§ 10. It shall be the duty of the president and directors, on such day of January and July of each and every year as may be conven-
66 ient, to make a dividend of so much of the profits of the said corporation as to them, or a majority of them, shall appear advisable, and no dividend shall be made of any premium received by the said corporation for any contract of insurance until the voyage or risk insured be terminated.

§ 11. Before the said corporation shall commence business or assume any risk in pursuance of this act, the whole amount of the capital stock shall be paid in specie or current bank bills, or shall have been secured to be paid, either in the stocks of the United States or stocks of the State of New York, or of any other State of the United States, or stocks of any incorporation created by the legislature of the State of New York that shall be at or above par at the time, or in the stocks of the corporation of the city of New York, or of any incorporated city of the State of New York, or upon bond and mortgage upon unincumbered real and leasehold estate in this State, of the value of at least thirty-three and one-third per cent. more than the amount loaned thereon, and may loan the funds and moneys of the corporation on the securities aforesaid; but the buildings on such real or leasehold estate shall be kept
67 at all times adequately insured.

§ 12. The said corporation shall hold no real or leasehold estate except such as may be required for the convenient transaction of business, or such as may be bona fide mortgaged to the said company by way of security, or such as may be conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments or decrees which it shall have obtained for such debts; and with regard to all such real and leasehold estate as aforesaid, except such as may be necessary for its immediate accommodation, or such as may have been bona fide mortgaged as aforesaid, the said corporation shall be bound to dispose of the same respectively within five years after the acquisition thereof, otherwise the same shall be forfeited and vested in the people of this State.

§ 13. It shall not be lawful for the said corporation to commence any business under this act until the president and secretary of the said company shall have made a deposition in writing before the mayor or

recorder of the city of New York, and filed the same in the office of the clerk of the city and county of New York, that the whole of the
68 capital stock has been paid in or secured to be paid according to the provisions of this act; and every wilful false swearing in the premises shall subject the party to all the pains and penalties of perjury; and if such affidavit is not filed within two years after the passage of this act, then this act and everything therein contained shall be void and of none effect.

§ 14. It shall be the duty of the president and secretary, at least thirty days before the annual election of directors, to prepare, and insert in a book to be provided for that purpose, a full and true statement of the funds, property, and securities of the said corporation; showing the amount of real and leasehold estate in bond and mortgage, in notes and securities thereof, in public debt or other stock, and the amount of debts due to and from the said corporation, which statements shall be certified by the president and secretary, and shall be open to the inspection of every stockholder of the said corporation during the usual hours of business, in the office thereof, until the day of election; and in case the president and secretary shall refuse or neglect to prepare
69 such a statement, or to submit the same when required, they and each of them shall forfeit and pay to any person so requiring the inspection of such statement, and being at the time of such neglect or refusal a stockholder in the said company, the sum of five hundred dollars, to be sued for and recovered by such stockholder to his own use in any court having jurisdiction to that amount; but such suit shall be commenced within twenty days after the annual election of directors of said corporation.

§ 15. The office for the transaction of business of the said corporation shall be located in the city of New York, and not elsewhere.

§ 16. The corporation hereby created shall possess the general powers and be subject to the provisions of the eighteenth chapter of the first part of the revised statutes, so far as the same are applicable.

§ 17. The corporation created by this act shall be subject, whenever it shall appear proper, to the investigation of its affairs by the chancellor or vice-chancellor of the first circuit, who may cause said affairs and situation of said corporation to be examined into and reported to the said chancellor or vice-chancellor by a master in chancery or such
70 other person as the chancellor or vice-chancellor shall appoint, the expense whereof shall be determined by said chancellor or vice-chancellor who in his discretion may direct such expense to be paid by the corporation or otherwise; but the provisions of this section shall not apply to any case of complaint of any individual who is not a stockholder.

§ 18. The person thus appointed to make such examination shall have power to examine, under oath, the president, vice president, and secretary, or any other officer or servant of said corporation, and the books, papers, and vouchers thereof, in such manner as will best advance the purpose of such investigation.

§ 19. If upon such investigation it shall appear that the said corporation have in any respect exceeded the powers hereby granted, or violated the provisions of this act, it shall be the duty of the chancellor or vice-chancellor, to exercise toward said corporation the same powers and authority as are now by law conferred on the chancellor in regard to banking corporations.

§ 20. It shall be lawful for the said corporation to obtain re-in-

71 surance against any marine risks whenever the officers thereof shall deem it prudent and discreet so to do.

§ 21. The legislature may at any time hereafter alter, modify, or repeal this act, or any of its provisions.

CHAPTER 207.

An act to amend the charter of "The Nautilus Insurance Company," passed May 21st, 1841. (Passed April 18, 1843, by a two-thirds vote.)

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. The act to incorporate "The Nautilus Insurance Company," passed May 21st, 1841, is hereby amended so as to allow said company, in addition to their chartered rights, the privilege of organizing and doing business under the plan of mutual insurance; and for that purpose the said company are hereby authorized to have and enjoy a charter similar in every respect to that of "The New York Mutual Insurance Company," (of the city of New York,) passed April 12th, 1842, except as the names of trustees, or commissioners, to carry
72 the charter into effect; and the commissioners named in the original act of May 21, 1841, are hereby continued for such purpose; and when application for insurance to (at least) $300,000 shall have been received the commissioners may proceed to organize said company.

§ 2. The said corporation shall, within two years from the passage of this act, proceed to business, otherwise this act and the original act of May 21, 1841, shall be void and of no effect.

§ 3. It shall be lawful for the said company, within two years from the passage of this act, to organize and do business under and by virtue of their act of May 21, 1841, or by virtue of the hereby amended act.

§ 4. The legislature may at any time hereafter alter or repeal this act or any of its provisions.

CHAPTER 287.

An act to incorporate "The New York Mutual Insurance Company," passed April 12, 1842, by a two-thirds vote.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. There shall be established in the city of New York
73 an insurance company for life, fire, inland navigation and transportation, and marine risks, to be called "The New York Mutual Insurance Company."

§ 2. In addition to the general powers and privileges of a corporation, as the same are declared by the third title of the eighteenth chapter of the first part of the Revised Statutes, the corporation hereby created shall have power by instrument, under seal, or otherwise:

1. To make insurance on lives, and to make all and every insurance appertaining to life.

2. To make insurance on dwelling-houses, stores and other buildings, household furniture, merchandise and other property against loss or damage by fire.

3. To make marine insurance upon vessels, freight, goods, wares and merchandise; specie, bullion, commissions, profits, bank-notes, bills of exchange and other evidences of debt, and upon bottomry and respon-

dentia interests; and to make all and every insurance appertaining to, or connected with, marine or inland transportation or navigation risks.

4. They may cause themselves to be re-insured against any risk upon which they have made or shall make insurance.

§ 3. All the corporate powers of the said company shall be exercised by a board of trustees, and such officers and agents as they may
74 appoint. The board of trustees shall consist of twenty persons, all of whom must be citizens of this State: they shall elect a president and a vice-president annually, who shall, on their election, be ex officio members of said board of trustees, and shall hold their office until others are elected in their stead. Nine or more of the said trustees shall constitute a quorum for the transaction of business.

§ 4. Bache McEvers, David S. Kennedy, Daniel Trimble, Stewart Brown, and Robert B. Minturn, of the city of New York, are hereby appointed commissioners, whose duty it shall be, within two years from the passage of this act, to open books to receive applications for insurance to be effected by said company; and as soon as applications amounting to five hundred thousand dollars shall be received, they shall give notice of the time and place of meeting of such persons for the election of twenty trustees and also of three inspectors, to preside at the election of trustees next succeeding the first election, such notice to be published daily for the space of one week next preceding such meeting in at least two of the public newspapers printed in the city of New York and in the State paper; and every person having so made application for insurance shall be entitled to vote at said election,
75 and the persons chosen at said election shall be trustees of the said company for the ensuing year.

§ 5. The trustees shall, at their first meeting, divide themselves by lot into four classes of five each. The term of the first class shall expire at the end of one year; the term of the second class shall expire at the end of two years; the term of the third class shall expire at the end of three years; and the term of the fourth class shall expire at the end of four years, and so on successively each and every year. The seats of the several classes shall be supplied by members of the corporation, and vacancies occasioned by death, resignation, or removal from the State shall be filled by the board of trustees, a plurality of votes constituting a choice. Each class shall hold over until others are elected in its stead, and this section shall not be so construed as to prevent a trustee going out from being eligible as a new trustee.

§ 6. Every person having taken a policy during the preceding year, directly in his own name or in the name of his firm, and every person holding, in his own name or in the name of his firm, a certificate or certificates of the company (not discharged by payment of losses) for
76 a proportionate share of the premiums earned as hereinafter provided for, to the amount of one hundred dollars, shall be deemed a member of said company, and entitled to vote in person or by proxy at all elections; and every person holding such certificate or certificates, in his own name or in the name of his firm, shall be entitled to an additional vote for every sum of one hundred dollars over the first one hundred dollars included in the same: Provided, however, That in no case shall any such person have a right to give more than one hundred votes.

§ 7. Every person who shall become a member of this corporation by effecting an insurance therein, shall, the first time he effects insurance, and before he receives his policy, pay the rates that shall be fixed upon and determined by the trustees; and no premiums so paid shall be withdrawn from said company during its continuance, but shall be liable to

all the losses and expenses incurred by the company during the continuance of its charter. Nothing, however, in this section contained shall prevent the said company from receiving notes for premiums on marine insurances effected by the said company.

77 § 8. It shall be lawful for the said company to loan all premiums received, and to invest the same in bonds and mortgages on unincumbered real estate within the State of New York, worth fifty per cent. more than the sum charged thereon, in all stocks created by or under the laws of this State or the United States, and in bottomry and respondentia bonds; but the amount invested in bottomry or respondentia bonds shall not, at the time of such investment, exceed one-half of the net profits made by such company.

§ 9. The company, for the better security of its dealers, may receive notes for premiums in advance, of persons intending to receive its policies, and may negotiate such notes for the purpose of paying claims or otherwise in the course of its business; and on such portions of said notes as may exceed the amount of premiums paid by the respective signers thereof at the successive periods when the company shall make up its annual statement as hereinafter provided for; and on new notes taken in advance thereafter a compensation to the signers thereof, at a rate to be determined by the trustees, but not exceeding five per cent. per annum, may be allowed and paid from time to time.

78 § 10. After the first election, annual elections shall be held for the choice of trustees and of three inspectors to hold the next election; notice of the time and place of such elections shall be given by the trustee in two public newspapers, printed in the city of New York, and in the State paper, daily for one week preceding such elections.

§ 11. The officers of the company, at the expiration of one year from the time that the first policy shall have been issued and bears date, and within one month thereafter, and during the first month after the expiration of every subsequent year, shall cause an estimate to be made of the profits and true state of the affairs of the said company, as near as may be, for the preceding year, and so on for each successive year; which estimates shall be conclusive upon all persons entitled to receive certificates as hereinafter provided for; and shall thereupon cause a balance to be struck of the affairs of the company in which they shall charge each member with a proportionate share of the losses of the company according to the original amount of premium paid by him; but in no case shall such share exceed the amount of such premium.

79 Such member shall be credited with his proportionate share of the amount of premiums earned, after deducting losses and expenses, and of the profits of the company derived from investments, which share of profits, derived from investments, shall be paid to such members; and for his proportionate share of the premiums earned he shall be entitled to a certificate, on the books of the company, of the amount remaining to his credits in the said company, such certificate to contain a proviso that the amount therein is liable for any future loss by said company. No certificates, however, shall be issued for any sum less than ten dollars, nor for the fractional part of sums between even tens of dollars, but all such fractional parts of sums, and sums less than ten dollars, shall be placed to the contingent account of the company, and applied to the expenses and other charges of the years to which they appertain.

§ 12. On some day in the first month after the expiration of the first year from the time when the said company shall issue their first policy,

and within the first month of every subsequent year, the officers of the company shall cause to be made and printed a general balance statement of the affairs of the company, which shall contain :

80 1. The amount of premiums received during the preceding year, specifying what amount was received on life-risks, what on fire-risks, what on marine-risks, and what on inland transportation and navigation risks.

2. The amount of expenses of the company during the year.

3. The amount of losses during the year, specifying the amount of losses incurred by life-risks, by fire-risks, by marine-risks, and by risks on inland transportation and navigation.

4. The balance remaining with the company, and

5. The nature of the security on which the same is invested, specifying what amount is invested on real estate in the city of New York, what on real estate in other parts of the State, what on stocks, what on bottomry and respondentia bonds, and what amount of cash is on hand, a printed copy of which statement shall be delivered to each member on request, and a copy shall be printed daily for two weeks after the first month of each year as aforesaid in the State paper and in two daily papers in the city of New York.

§ 13. Whenever the accumulation of the net profits of the company shall exceed five hundred thousand dollars the excess may be applied from year to year, or semi-annually thereafter, towards the re-

81 demption of each year's certificates, in whole or in part, as may be determined on by the board of trustees ; but the certificates of a subsequent year are not to be redeemed until those of the preceding are provided for ; and when such accumulation shall exceed ten hundred thousand dollars it shall be the duty of the trustees to apply such latter excess towards the redemption of certificates, in whole or in part, in the manner above specified.

§ 14. Suits at law or in equity may be prosecuted and maintained by any member against said corporation, and no member of the corporation not being in his individual capacity a party to such suit shall be incompetent as a witness.

§ 15. The sections of the revised statutes, from nineteen to twenty-five, both inclusive, of the first article of the second title of the eighteenth chapter of the first part, shall not be applicable to the corporation hereby created.

§ 16. The operations and business of the corporation shall be carried on at such place in the city of New York as the trustees shall direct, and not elsewhere.

§ 17. This act shall take effect immediately, and continue in force for the period of thirty years.

§ 18. The legislature may at any time alter or repeal this act.

82 CHAPTER 211.

An act to amend the charter of the "Nautilus Insurance Company" in the city of New York, passed April 5, 1849.

The people of the State of New York, represented in senate and assembly, do enact as follows :

§ 1. The Nautilus Insurance Company shall hereafter be known as the "New York Life-Insurance Company."

(2.) § 2. The business of the said company shall be confined to insurance on lives, and it may make all and every insurance appertaining to

life, and receive and execute trusts, make endowments, and grant and purchase annuities.

§ 3. At the election for trustees each insurance member, for any sum paid in or secured as a premium of insurance to said company during the year preceding such election shall have one vote, either in person or by proxy, duly signed by the person effecting such insurance; and every person holding a certificate or certificates of the company (not discharged by the payment of losses) to the amount of one hundred dollars shall also be entitled to one vote, and for every additional hundred dollars one vote in the same manner.

83 § 4. When the actual capital of such company, liable for the payment of losses, shall amount to the sum of two hundred thousand dollars the notes given for premiums in advance may be given up to be cancelled.

§ 5. The officers of this company, within one month subsequent to the first day of January in each year, shall cause an estimate to be made of the profits and true state of affairs of the said company, as near as may be, for the preceding year, and all such dividends as may be declared by the trustees, shall be placed to the credit of the persons entitled thereto on the books of the company, and each person so entitled may receive a certificate therefor. No certificate, however, shall be issued for any sum less than ten dollars, such dividend-certificates to contain a proviso that the amount named therein is liable for any loss by said company. The trustees may, at their discretion, declare or pay interest on such certificates at a rate of not exceeding six per cent. per annum; but not dividend shall ever be declared and payable impairing the capital or accumulation of said company.

§ 6. The statement required to be made by the act amending
84 the charter of said company, passed April 15, 1843, shall hereafter be made within thirty days after the first day of January in each year.

§ 7 The change of name of the corporation shall not prejudice the rights of any person, dealer or assured; but suits may be sustained by or against the company in its present corporate name on any former policy or liability, and any act or contract of the company under the charter hereby amended, not inconsistent with the provisions hereof, shall be adjudged valid between all parties, and all provisions of the charter hereby amended, inconsistent with this act, are hereby repealed.

§ 8. The legislature may at any time alter or repeal this act.

§ 9. This act shall take effect immediately.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes
85 depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that he lives in New York, a

greater distance from the place of trial of above-named cause than one hundred miles. I further certify that a notification of the time and place of taking the said deposition, signed by atty. for defendant, was made out and served on the attorney for plaintiff, and service thereof admitted by said attys. for plaintiff, to be present at the taking of the deposition and to put interrogatories, if he or they might think fit. I further certify that on the 23rd day of May, in the year one thousand eight hundred and seventy-three, I was attended by Charles P. Crosby, counsel for defendant, and Mr. Harrison, counsel for plaintiff, and by the wit-
86 ness, who was of sound mind and lawful age; and the witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by a stenographer, by consent of counsel, reduced to writing, in the presence of the witness, and from his statement, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up and directing the same with my own hand to the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal this twenty-third day of May, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-seventh.

[L. S.] JOHN A. OSBORN,

United States Commissioner, duly appointed by the Circuit Court of the United States for Southern District of New York, in the Second District.

87 CHARLOTTE SEYMS }
vs.
N. Y. LIFE INS. CO. }

Is the plaintiff. Is the widow of Henry S. Seyms, and the person for whose benefit the policy was taken. Her husband, H. S. Seyms, died 28 May, 1862. There had been two premiums paid upon the policy; one at the issuance, and the other at the time specified in the policy as stated in receipts. Was acquainted with W. A. Barbour, who was the agent of defendants; resided in Vicksburg, as informed; was in the army in Va. in 1861. In Dec., 1861, when the premium became due, he was not at least in Vicksburg. Went to N. Y. in 1865, in July; was the 1st opportunity to go after the war; could not go during the war. When she went to N. Y. went to the office of defts.; made a demand for the policy, which was refused for the reason that there were so many cases similar that *that* they could not pay. Mr. Francis, a friend, proffered to pay all the premiums due up to death of husband. The person to whom application was made—it was made to a gentleman.

88 Policy issued 23 Dec., 1859; annual premiums payable on that day annually, $149.75; paid at issuance, and in 1860. No agent afterwards to receive premiums, and none afterwards paid.

X:

Policy was applied for and taken out by husband for wit. benefit. Knew that Barbour was agent, but had no conversation with him on the subject. Knows there was no agent of defts. in Vicksburg to whom payment could be made; husband was attending to it; was informed by husband that he could not find agent to whom to pay; made no effort to

pay herself. Neither herself or husband made effort to go to N. Y. to make payment; did not do so herself, or know of husband doing so. Husband and self remained in V. B. from time policy was taken out to his death. Does not know the man in the office in N. Y.; man did not say that defts. were bound to pay, but said there were so many of the same kind, if they paid one, would be bound to pay all.

Re examined:

89 Was personally acquainted with Barbour; knew that he went with confederate soldiers to Virginia, and never saw him afterwards in V. B. Pl. remained in V. B. all the time; believe if he had returned she would have known it.

Defendant's testimony.

HARRIS:

Knew Barbour the agent; does not know certainly where he died; thinks it was in this State; knew he went with army to Va. in 1861; that he some time afterwards returned to Miss. and joined cavalry command. Agents of deft. were applied to at V. B., who refused to pay; also made demand at defts. company in N. Y., who declined to pay until the question of liability should be judicially determined.

90 It is admitted that Barbour, the former agent of the New York Life-Insurance Co., at Vicksburg, Mississippi, returned from the army of Virginia, and was in the State of Mississippi in the spring of 1865, and afterwards died in the city of New Orleans, Louisiana. It is further admitted that neither the assured, nor the plaintiff, his wife, made any effort during the war, and before his death, to pay the premium in the city of New York, where the defts. reside and have their principal office or place of business, which matured before the death of the assured; and that the plaintiff relies upon the occurrence of the war between the Northern and Southern States, and the non-intercourse between them occasioned thereby, to excuse the failure to pay said premium.

WHARTONS,
For Defts.
NUGENT AND YERGER,
For Statham.
HARRIS AND HARRIS,
For Charlotte Seyms.

91 *Petition for writ of error.*

To George T. Swann, clerk circuit court of the United States for the southern district of Mississippi:

The undersigned, the New York Life-Insurance Company, feel aggrieved by a judgment rendered at the November term, 1873, (on the 28th November, 1873,) of the circuit court of the United States for the said southern district of the State of Mississippi, in a certain cause wherein Charlotte Seyms was plaintiff and the said New York Life-Insurance Company were defendants.

Wherefore they pray that a writ of error, to operate as a supersedeas, may issue returnable to the next term of the Supreme Court of the United States, to be held on the 2d Monday of October, A. D. 1874, at the city of Washington, upon their giving bond as required by law.

The New York Life-Insurance Company,
By T. J. AND F. A. R. WHARTON,
Attorneys.

Filed 26th January, 1874.

G. T. SWANN, *Clk.*

92 *Appeal bond.*

Know all men by these presents that we, the New York Life-Insurance Company, a body-corporate, duly incorporated under the laws of the State of New York, and having its principal place of business in the city of New York, and the Mississippi Valley Bank, the stockholders of which are citizens of the State of Mississippi, residing in the southern district thereof, and Thomas J. Wharton and Thomas Green, of said district and State, are held and firmly bound unto Charlotte Seyms, of the county of Warren and State of Mississippi, and her certain attorneys, executors, administrators, and assigns, in the sum of seven thousand seven hundred and seventy-nine dollars and seventy cents ($7,779.70) current money, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, and the successors of the said body-corporate, jointly and severally, firmly by these presents. Signed by Morris Franklin, who is the president of the said New York Life-Insurance Company, who has, by due authority of said body-corporate, hereunto affixed the common seal of said body-
93 corporate; and the three other obligors also named have affixed their hands and seals the fifth day of January, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas, lately, at a circuit court of the United States held at the city of Jackson, in and for the southern district of Mississippi, in a suit at law depending in said court between the said Charlotte Seyms, plaintiff, and the said New York Life-Insurance Company, defendant, on the 28th day of November, in the year of our Lord one thousand eight hundred and seventy-three, judgment was rendered in favor of the said plaintiff against the said defendant, for the sum of three thousand eight hundred and eighty-nine dollars and eighty-five cents, ($3,889.85-100,) with interest thereon at the rate of six per cent. per annum from the date of said judgment until paid, and the costs of suit; and the said defendant, feeling aggrieved thereby, having obtained a writ of error to said judgment, and filed a copy thereof in the clerk's office of said court, to revise and reverse said judgment, and a citation directed to
94 said Charlotte Seyms, plaintiff, and citing and admonishing her to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October, in the year of our Lord one thousand eight hundred and seventy-four, (1874:)

Now the condition of this obligation is such, that if the said New York Life-Insurance Company (defendants, &c.) shall prosecute the said writ of error to effect, and answer all costs and damages if said company fail therein to make their said plea good, then the above obligation to be void; else to remain in full force and virtue.

MORRIS FRANKLIN, [L. S.]
President.

WM. H. BEERS, [SEAL.]
Vice-President and Actuary.

GEO. M. KLEIN, [SEAL]
Cashier, for Mississippi Valley Bank.

T. J. WHARTON. [SEAL.]

THOMAS GREEN. [SEAL.]

I approve the above bond, January 26th, 1874.

R. A. HILL,
Judge, &c.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this fifth day of January, A. D. 1874, before me, the undersigned, Ferd. R. Anderson, a commissioner for the State of Mississippi in and for the city, county, and State of New
95 York, duly commissioned and sworn, and dwelling in the city of New York, personally appeared Morris Franklin, the president, and William H. Beers, vice-president and actuary, of the New York Life-Insurance Company, of New York City, to me respectively personally known to be such, who, being by me duly sworn and affirmed, did each for himself depose and say, that he, the said Morris Franklin, resides at Flushing, on Long Island, and the said Wm. H. Beers resides at the city of New York, and the said Morris Franklin, the president, and the William H. Beers, was the vice-president and actuary, of the said New York Life-Insurance Company; that they knew the corporate seal of the said company; that the seal affixed to the foregoing instrument was such corporate seal, and it was so affixed by order of the board of trustees of the said company, and they severally signed their names thereto, by the like order, as a president and vice-president and actuary of the said company respectively, and the said Morris Franklin and Wm. H. Beers, being known to me to be the identical persons above de-
96 scribed, also hereby acknowledged to me that they executed the foregoing instrument as the voluntary act and deed of the said company, and also severally acknowledged to me that the said instrument of writing, by them signed and executed as aforesaid, was the free and voluntary act and deed of the said company, for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and official seal, at New York, this fifth day of January, in the year one thousand eight hundred and seventy-four.

[L. S.] FERD. R. ANDERSON,
Commissioner for Mississippi in city, county, and State of New York.

THE STATE OF MISSISSIPPI,
Warren County:

Personally came before me, H. N. Martin, a notary public for said county and State, George M. Klein, who, after being by me duly sworn, upon his oath, says as follows: That he is the cashier of the Mississippi Valley Bank, which is a banking corporation, duly chartered, &c., and having its place of doing business in the city of Vicksburg, in the
97 State of Mississippi; that as such cashier, and under and by virtue of authority duly granted to him as such by the board of directors of said bank, duly entered on the minutes of the proceedings of said board of directors, he signed the foregoing bond. That after the payment of all its just debts and legal liabilities said Mississippi Valley Bank has in the State of Mississippi assets liable to sale under execution, and over and beyond all property exempt from sale under the laws of the State, exceeding in value the sum of seven thousand seven hundred and seventy-nine dollars and seventy cents, ($7,779.70–100.)

GEO. M. KLEIN,
Cashier for Mississippi Valley Bank.

Sworn to and subscribed before me on this the 23rd day of January, 1874, witness my hand and seal.

H. N. MARTIN,
Notary Public.

THE UNITED STATES OF AMERICA,
Southern District of Mississippi:

Personally appeared before me, W. H. H. Green, notary public in and for the city of Jackson, and State aforesaid, Thomas J. Wharton
98 and Thomas Green, whose genuine signatures are attached to the within bond for appeal in the case of Charlotte Seyms against New York Life Insurance Company, who acknowledged that they signed, sealed, and delivered the within bond as their act and deed on the day and year and for the purposes therein stated. And being by me duly sworn, they did depose as follows, viz: The said Wharton, that he is worth in property situated in said district and State, subject to execution, and over and all legal liabilities, the sum of ten thousand dollars; and the said Green that he is worth as aforesaid, in property as aforesaid, situated as aforesaid, fifteen thousand dollars.

T. J. WHARTON,
THOMAS GREEN.

Sworn to and subscribed before me this 26th day of December, 1874.

W. H. H. GREEN,
Notary Public.

Filed Jan'y 26th, 1874.

GEO. T. SWANN, *Clk.*

99 And afterwards, to wit, on the 28th day of May, 1874, a day in the May term, A. D. 1874, of said circuit court of the United States, the following order was made in this cause by said court, and entered upon the minutes thereof, to wit:

CHARLOTTE SEYMS
vs.
THE NEW YORK LIFE-INSURANCE CO. } No. 1653.

Be it remembered that now, on this day, came into court said complainant, by her attorneys, Harris and Harris, and moved the court to be permitted to enter a remittitur upon the judgment herein rendered on the 28 day of November, A. D. 1873, of the sum of four hundred dollars; which motion is sustained by the court; whereupon said plaintiff enters of record a remittitur upon said judgments of said sum of four hundred dollars, leaving the amount due said plaintiff of three thousand four hundred and eighty-nine dollars and eighty-five cents ($3,489.85) upon said judgment and costs. The entry of this remittitur in no manner to impair the validity of said judgment for the amount remaining due thereon and all costs of suit. This entry to be made as of said 28th day of November, A. D. 1873.

100 UNITED STATES OF AMERICA:
Circuit court of the United States for the southern district of Mississippi.

I, George T. Swann, clerk of said court, do hereby certify that the preceding ninety-nine pages contain a full, true, and perfect transcript of the record of a cause lately pending in said court, wherein Charlotte Seyms was plaintiff and the New York Life-Insurance Company was defendant, No. 1653; also true copies of the opinion of said court delivered on the rendition of the final judgment therein, and of all the testimony submitted to the court on the trial of said cause; and also copies

of the petition for writ of error and writ of error bond filed therein, and of a remi titur subsequently entered of record in said cause, as the same remain of record and on file in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at office at Jackson, in said State and district, this 11th day of June, A. D. 1874.

[SEAL.] GEOR. T. SWANN,
Clerk.

Clerk's fee: Trans., $22.77; cert., 25—$23.02.

(Indorsement on cover:) No. 463. The New York Life-Insurance Co., plaintiff in error, vs. Charlotte Seyms. S. Mississippi. C. C U. S. Filed, 8th August, 1874.